

JACOBSON, RUSSELL, SALTZ, NASSIM & DE LA TORRE LLP

Michael J. Saltz, Esq. SBN 189751 [msaltz@jrsnd.com]

Colby A. Petersen, Esq. SBN 274387 [cpetersen@jrsnd.com]

1880 Century Park East, Suite 900

Los Angeles, CA 90067

Telephone: (310) 446-9900

Fax: (310) 446-9909

Attorneys for Defendant On-Site Manager, Inc.

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

MICHAEL JONES, an individual,

Plaintiff,

v.

ON-SITE MANAGER, INC., a
California corporation; QUALFAX,
INC., a California corporation; KIPLING
VILLAGE, LLC, a Colorado limited
liability company, and DOES 1 through
10, inclusive,

Defendants.

Case No.: 5:17-cv-01437-BLF

**DEFENDANT ON-SITE
MANAGER, INC.'S ANSWER TO
PLAINTIFF'S SECOND AMENDED
COMPLAINT.**

DEMAND FOR JURY TRIAL

Complaint filed: June 21, 2016

First Amended Complaint filed:
July 31, 2017

Second Amended Complaint filed:
November 16, 2017

Trial Date: February 15, 2021

TO THE COURT, ALL PARTIES, AND THEIR ATTORNEYS OF RECORD:

Defendant ON-SITE MANAGER, INC. (“Defendant”) through its undersigned counsel, hereby answers the Second Amended Complaint (“Complaint”) filed by Plaintiff MICHAEL JONES (“Plaintiff”).

1. On information and belief, Defendant denies each and every material allegation set forth in Paragraph 1.

2. On information and belief, Defendant admits each and every material allegation set forth in Paragraph 2.

3. On information and belief, Defendant admits each and every material allegation set forth in Paragraph 3.

4. Defendant admits it has “a principal place of business at 307 Orchard City Drive, Suite 110, Campbell, CA 95008.” On information and belief, Defendant lacks sufficient knowledge to either admit or deny the remaining allegations set forth in Paragraph 4 and on that basis must deny.

5. On information and belief, Defendant lacks sufficient knowledge to either admit or deny each and every material allegation set forth in Paragraph 5 and on that basis must deny.

6. On information and belief, Defendant lacks sufficient knowledge to either admit or deny each and every material allegation set forth in Paragraph 6 and on that basis must deny.

7. On information and belief, Defendant lacks sufficient knowledge to either admit or deny each and every material allegation set forth in Paragraph 7 and on that basis must deny.

8. On information and belief, Defendant lacks sufficient knowledge to either admit or deny each and every material allegation set forth in Paragraph 8 and on that basis must deny.

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1 9. On information and belief, Defendant lacks sufficient knowledge to either
2 admit or deny each and every material allegation set forth in Paragraph 9 and on that
3 basis must deny.

4 10. On information and belief, Defendant lacks sufficient knowledge to either
5 admit or deny each and every material allegation set forth in Paragraph 10 and on that
6 basis must deny.

7 11. On information and belief, Defendant lacks sufficient knowledge to either
8 admit or deny each and every material allegation set forth in Paragraph 11 and on that
9 basis must deny.

10 12. On information and belief, Defendant lacks sufficient knowledge to either
11 admit or deny each and every material allegation set forth in Paragraph 12 and on that
12 basis must deny.

13 13. On information and belief, Defendant lacks sufficient knowledge to either
14 admit or deny each and every material allegation set forth in Paragraph 13 and on that
15 basis must deny.

16 14. On information and belief, Defendant lacks sufficient knowledge to either
17 admit or deny each and every material allegation set forth in Paragraph 14 and on that
18 basis must deny.

19 15. On information and belief, Defendant lacks sufficient knowledge to either
20 admit or deny each and every material allegation set forth in Paragraph 15 and on that
21 basis must deny.

22 16. On information and belief, Defendant lacks sufficient knowledge to either
23 admit or deny each and every material allegation set forth in Paragraph 16 and on that
24 basis must deny.

25 17. On information and belief, Defendant lacks sufficient knowledge to either
26 admit or deny each and every material allegation set forth in Paragraph 17 and on that
27 basis must deny.

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1 18. On information and belief, Defendant lacks sufficient knowledge to either
2 admit or deny each and every material allegation set forth in Paragraph 18 and on that
3 basis must deny.

4 19. On information and belief, Defendant lacks sufficient knowledge to either
5 admit or deny each and every material allegation set forth in Paragraph 19 and on that
6 basis must deny.

7 20. On information and belief, Defendant lacks sufficient knowledge to either
8 admit or deny each and every material allegation set forth in Paragraph 20 and on that
9 basis must deny.

10 21. On information and belief, Defendant lacks sufficient knowledge to either
11 admit or deny each and every material allegation set forth in Paragraph 21 and on that
12 basis must deny.

13 22. On information and belief, Defendant lacks sufficient knowledge to either
14 admit or deny each and every material allegation set forth in Paragraph 22 and on that
15 basis must deny.

16 23. On information and belief, Defendant lacks sufficient knowledge to either
17 admit or deny each and every material allegation set forth in Paragraph 23 and on that
18 basis must deny.

19 24. On information and belief, Defendant lacks sufficient knowledge to either
20 admit or deny each and every material allegation set forth in Paragraph 24 and on that
21 basis must deny.

22 25. Defendant hereby reaffirms, realleges, and incorporates herein by this
23 reference the admissions and denials as set forth in paragraphs 1-24 of this Answer.

24 26. On information and belief, Defendant lacks sufficient knowledge to either
25 admit or deny each and every material allegation set forth in Paragraph 26 and on that
26 basis must deny.

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27. On information and belief, Defendant lacks sufficient knowledge to either admit or deny each and every material allegation set forth in Paragraph 27 and on that basis must deny.

28. On information and belief, Defendant lacks sufficient knowledge to either admit or deny each and every material allegation set forth in Paragraph 28 and on that basis must deny.

29. On information and belief, Defendant lacks sufficient knowledge to either admit or deny each and every material allegation set forth in Paragraph 29 and on that basis must deny.

30. On information and belief, Defendant lacks sufficient knowledge to either admit or deny each and every material allegation set forth in Paragraph 30 and on that basis must deny.

31. On information and belief, Defendant denies each and every material allegation set forth in Paragraph 31.

32. On information and belief, Defendant denies each and every material allegation set forth in Paragraph 32.

33. On information and belief, Defendant denies each and every material allegation set forth in Paragraph 33.

34. Defendant hereby reaffirms, realleges, and incorporates herein by this reference the admissions and denials as set forth in paragraphs 1-33 of this Answer.

35. On information and belief, Defendant lacks sufficient knowledge to either admit or deny each and every material allegation set forth in Paragraph 35 and on that basis must deny.

36. On information and belief, Defendant denies each and every material allegation set forth in Paragraph 36.

37. On information and belief, Defendant lacks sufficient knowledge to either admit or deny each and every material allegation set forth in Paragraph 37 and on that basis must deny.

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38. On information and belief, Defendant denies each and every material allegation set forth in Paragraph 38.

39. On information and belief, Defendant denies each and every material allegation set forth in Paragraph 39.

40. Defendant hereby reaffirms, realleges, and incorporates herein by this reference the admissions and denials as set forth in paragraphs 1-39 of this Answer.

41. On information and belief, Defendant lacks sufficient knowledge to either admit or deny each and every material allegation set forth in Paragraph 41 and on that basis must deny.

42. On information and belief, Defendant lacks sufficient knowledge to either admit or deny each and every material allegation set forth in Paragraph 42 and on that basis must deny.

43. On information and belief, Defendant lacks sufficient knowledge to either admit or deny each and every material allegation set forth in Paragraph 43 and on that basis must deny.

44. On information and belief, Defendant lacks sufficient knowledge to either admit or deny each and every material allegation set forth in Paragraph 44 and on that basis must deny.

45. On information and belief, Defendant denies each and every material allegation set forth in Paragraph 45.

46. On information and belief, Defendant denies each and every material allegation set forth in Paragraph 46.

47. On information and belief, Defendant lacks sufficient knowledge to either admit or deny each and every material allegation set forth in Paragraph 47 and on that basis must deny.

48. On information and belief, Defendant lacks sufficient knowledge to either admit or deny each and every material allegation set forth in Paragraph 48 and on that basis must deny.

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1 49. On information and belief, Defendant lacks sufficient knowledge to either
2 admit or deny each and every material allegation set forth in Paragraph 49 and on that
3 basis must deny.

4 50. On information and belief, Defendant lacks sufficient knowledge to either
5 admit or deny each and every material allegation set forth in Paragraph 50 and on that
6 basis must deny.

7 51. On information and belief, Defendant denies each and every material
8 allegation set forth in Paragraph 51.

9 52. On information and belief, Defendant lacks sufficient knowledge to either
10 admit or deny each and every material allegation set forth in Paragraph 52 and on that
11 basis must deny.

12 53. On information and belief, Defendant denies each and every material
13 allegation set forth in Paragraph 53.

14 54. On information and belief, Defendant denies each and every material
15 allegation set forth in Paragraph 54.

16 55. Defendant hereby reaffirms, realleges, and incorporates herein by this
17 reference the admissions and denials as set forth in paragraphs 1-54 of this Answer.

18 56. On information and belief, Defendant lacks sufficient knowledge to either
19 admit or deny each and every material allegation set forth in Paragraph 56 and on that
20 basis must deny.

21 57. On information and belief, Defendant lacks sufficient knowledge to either
22 admit or deny each and every material allegation set forth in Paragraph 57 and on that
23 basis must deny.

24 58. On information and belief, Defendant denies each and every material
25 allegation set forth in Paragraph 58.

26 59. On information and belief, Defendant denies each and every material
27 allegation set forth in Paragraph 59.

60. Defendant hereby reaffirms, realleges, and incorporates herein by this reference the admissions and denials as set forth in paragraphs 1-59 of this Answer.

61. On information and belief, Defendant lacks sufficient knowledge to either admit or deny each and every material allegation set forth in Paragraph 61 and on that basis must deny.

62. On information and belief, Defendant lacks sufficient knowledge to either admit or deny each and every material allegation set forth in Paragraph 62 and on that basis must deny.

63. On information and belief, Defendant lacks sufficient knowledge to either admit or deny each and every material allegation set forth in Paragraph 63 and on that basis must deny.

64. On information and belief, Defendant lacks sufficient knowledge to either admit or deny each and every material allegation set forth in Paragraph 64 and on that basis must deny.

65. On information and belief, Defendant denies each and every material allegation set forth in Paragraph 65.

66. On information and belief, Defendant denies each and every material allegation set forth in Paragraph 66.

67. On information and belief, Defendant denies each and every material allegation set forth in Paragraph 67.

68. Defendant hereby reaffirms, realleges, and incorporates herein by this reference the admissions and denials as set forth in paragraphs 1-67 of this Answer.

69. On information and belief, Defendant lacks sufficient knowledge to either admit or deny each and every material allegation set forth in Paragraph 69 and on that basis must deny.

70. On information and belief, Defendant denies each and every material allegation set forth in Paragraph 70.

71. On information and belief, Defendant denies each and every material allegation set forth in Paragraph 71.

72. On information and belief, Defendant denies each and every material allegation set forth in Paragraph 72.

73. Defendant admits that Plaintiff demands a trial by jury on all issues so triable.

AFFIRMATIVE DEFENSES

FIRST DEFENSE

Defendant is informed and believes, and thereon alleges that Plaintiff's Complaint, and each and every cause of action contained therein, fails to state a claim upon which relief can be granted.

SECOND DEFENSE

Defendant is informed and believes, and thereon alleges that Plaintiff's Complaint, and each and every cause of action contained therein, are barred in whole or in part because, at all material times, Defendant acted reasonably, in good faith and without malice based upon all relevant facts and circumstances known by Defendant at the time.

THIRD DEFENSE

Defendant is informed and believes, and thereon alleges that Plaintiff's Complaint, and each and every cause of action contained therein, are barred in whole or in part because Defendant satisfied all obligations that it had, if any, under applicable law.

FOURTH DEFENSE

Defendant is informed and believes, and thereon alleges that Plaintiff's recovery is limited in whole or in part by Plaintiff's failure to mitigate his alleged damages and also by the doctrine of avoidable consequences and all similar and equivalent doctrines.

FIFTH DEFENSE

To the extent, if any, that Plaintiff seeks to recover for any alleged harm that is outside of the applicable statute of limitations, such claims are barred by the applicable statute of limitations.

SIXTH DEFENSE

Defendant is informed and believes, and thereon alleges that Plaintiff's Complaint, and each and every cause of action contained therein, are barred in whole or in part because Plaintiff did not suffer any cognizable damage or other harm as a proximate result of any act or omission of Defendant.

SEVENTH DEFENSE

Defendant is informed and believes, and thereon alleges that Plaintiff's Complaint, and each and every cause of action contained therein, are barred in whole or in part because the alleged losses or harms sustained by Plaintiff, if any, resulted from the acts or omissions of Plaintiff or from causes other than any act or omission by Defendant.

EIGHTH DEFENSE

Defendant is informed and believes, and thereon alleges that Plaintiff's Complaint, and each and every cause of action contained therein, are barred in whole or in part because the alleged losses or harms sustained by Plaintiff, if any, resulted from causes other than any alleged act or omission by Defendant or its agents or employees, including but not limited to acts or omissions by third parties.

NINTH DEFENSE

Defendant is informed and believes, and thereon alleges that Plaintiff's Complaint, and each and every cause of action contained therein, are barred in whole or in part because Defendant's conduct was privileged.

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TENTH DEFENSE

Defendant is informed and believes, and thereon alleges that Plaintiff's Complaint, and each and every cause of action contained therein, are barred in whole or in part because Defendant's conduct was mandated by law.

ELEVENTH DEFENSE

Defendant is informed and believes, and thereon alleges that assuming, *arguendo*, any of the unlawful conduct alleged by Plaintiff occurred, such unlawful conduct was not perpetrated by a managing agent of Defendant, nor did any managing agent of Defendant ratify the alleged unlawful conduct.

TWELFTH DEFENSE

Defendant is informed and believes, and thereon alleges that, to the extent Plaintiff seeks civil or statutory penalties, or punitive or statutory damages, such claims violate the Fifth, Eighth, Fourteenth and Amendments of the United States Constitution, including the prohibition against excessive fines.

THIRTEENTH DEFENSE

Defendant is informed and believes and thereon alleges that to the extent any allegation or cause of action alleged in Plaintiff's Complaint relies upon any verbal or non-verbal speech or expression, including any commercial speech, such allegations or causes of action are barred by the protections of free speech and expression contained in the First Amendment of the United States Constitution.

FOURTEENTH DEFENSE

Defendant is informed and believes, and thereon alleges that, Plaintiff's Complaint was filed in bad faith and for the purposes of harassment and Defendant is entitled to its attorneys' fees in defending this action pursuant to 15 U.S.C § 1681n and 15 U.S.C. § 1681o accordingly.

FIFTEENTH DEFENSE

Defendant is informed and believes, and thereon alleges that Plaintiff's Complaint, and each and every cause of action contained therein, are barred in whole

1 or in part because any alleged communication by Defendant was truthful and/or
2 accurate when made.

3 **RESERVATION OF ADDITIONAL DEFENSES**

4 Defendant reserve the right to amend this Answer should it later discover facts
5 demonstrating the existence of new and/or additional defenses and/or should a change
6 in the law support the inclusion of new and/or additional defenses.

7
8 **DEMAND FOR JURY TRIAL**

9 Defendant On-Site Manager, Inc. hereby demands trial by jury in this action.

10
11 **PRAYER FOR RELIEF**

12 WHEREFORE, Defendant prays judgment as follows:

- 13 1. That Plaintiff take nothing by his complaint;
14 2. That Defendant be awarded its costs herein incurred; and
15 3. For such other and further relief as the court may deem proper.

16 DATED: December 1, 2017

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18 **JACOBSON RUSSELL SALTZ,
19 NASSIM & DE LE TORRE LLP**

20
21 By: /s/ Michael J. Saltz
22 Michael Saltz
23 Attorneys for Defendant
24 ON-SITE MANAGER, INC.
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